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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/062,167	01/31/2002	John L. Swinger	VIN1567-206	8732

8698 7590 04/29/2003

STANDLEY & GILCREST LLP  
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SUITE 210  
DUBLIN, OH 43017

EXAMINER

REILEY III, DONALD C

ART UNIT	PAPER NUMBER
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3726

DATE MAILED: 04/29/2003

3

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/062,167

Applicant(s)

SWINGER, JOHN L.

Examiner

donald c reiley

Art Unit

3726

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Gibson as disclosed in Figure 1 and page 1, lines 47-79.

Regarding claim 1, Gibson teaches wrapping wire F entirely around rails D and around the other fence components and then tightening the wire making use of machine H in order to strengthen the fence assemblage. Accordingly, Gibson teaches the well-known concepts of using a banding machine to secure a fence section and of wrapping a wire or band entirely around each rail or fence component in order to strength that fence section.

Regarding claim 5, Gibson teaches this fence section assemblage in Figure 1. Product-by-process claims are not limited to the manipulations of the recited steps, but are construed to cover only the structure implied by the steps. See *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985).

Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by the Lawrence patent - note Figure 5 wherein strap 54 retains the picket fence components together- or the Bisch patents -note Figure 2 wherein strap 22 secures the fence components together. Product-by-process

claims are not limited to the manipulations of the recited steps, but are construed to cover only the structure implied by the steps. See *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as obvious over Lawrence who discloses in Figures 1,2 and 5 a fence assemblage of plastic component posts 24, rails 26 and pickets 23 secured together by means of bands 54 which provide the bias to perfect the frictional engagement of the plastic components but does not teach the use of a banding machine. It would be obvious to one of ordinary skill in the art to modify the teachings of Lawrence by making use of such a well-known concept as a banding machine in order to apply bands 54 in minimal assembling time rather than doing it by hand.

Claims 1, 2 and 4 are rejected under 35 U.S.C. 103(a) as obvious over Bisch. Bisch teaches - Figures 1,2 and 13- a fence assemblage made of rails having holes therein to receive the ends of pickets and using straps 22 to secure the fence panels together but does not teach using a banding machine, employing plastic fence components or wrapping the straps entirely around the fence rails. Regarding claim 1, it would be obvious to one of ordinary skill in the art to modify

Art Unit: 3726

the teachings of Bisch by applying straps using such a well-known concept as a banding machine in order to enhance efficiency.

Regarding claim 2, it is well known that fences may be made of plastic and that strips may be made of plastic and the examiner takes Official Notice that this is very well known in order to reduce costs and to minimize the effects of weathering.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Don C Reiley III whose telephone number is (703) 305-5042. The examiner can normally be reached on m-thr. 9:30AM to 8:00PM

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Vidovich can be reached on (703) 308-1513. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7769 for regular communications and (703) 308-7769 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-7769.

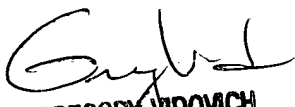
Application/Control Number: 10/062,167

Page 5

Art Unit: 3726

DCR

April 24, 2003

  
GREGORY VIDOVICH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700

Es.